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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Appellant, v. JUAN MENCHACCA GALVAN, JR., Defendant and Respondent.	E063887 (Super.Ct.No. RIF10001052) OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge. Affirmed.

Michael A. Hestrin, District Attorney, and Emily R. Hanks, Deputy District Attorney, for Plaintiff and Appellant.

Kurt David Hermansen, under appointment by the Court of Appeal, for Defendant and Respondent.

The People appeal from an order of the superior court granting defendant Juan Menchacca Galvan, Jr.'s petition (Pen. Code, § 1170.18)[1] to recall his sentence on his felony conviction for second degree burglary (§ 459) and to resentence him under the Safe Neighborhoods and Schools Act (Proposition 47). (§ 1170.18.) On appeal, the People argue: (1) defendant did not meet his burden of establishing eligibility for the redesignation of the offense to a misdemeanor under Proposition 47; (2) defendant was not eligible to petition for redesignation of the offense to a misdemeanor under Proposition 47 because he remained guilty of second degree burglary even after the passage of Proposition 47; (3) defendant's conduct of entering a bank with the intent to commit felony identity theft does not meet the statutory definition of misdemeanor "shoplifting" under section 459.5, a crime added by Proposition 47; and (4) defendant did not enter a "commercial establishment" within the meaning of section 459.5. We affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND[2]

On August 20, 2009, the victim purchased a money order in the amount of $371.75 at a grocery store in Riverside, California. The victim remitted the money order to Toyota Financial and placed it inside her apartment complex's community mailbox.

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[1] All future statutory references are to the Penal Code unless otherwise stated.

[2] The factual background is taken from the declaration in support of arrest warrant.

Three weeks later, the victim was informed by Toyota Financial that her payment had not been received.

On August 22, 2009, defendant entered EZ Check Cashing in Rubidoux, California and cashed a money order in the amount of $351.75. During the transaction, defendant presented his identification to cash the money order, and the pay to line contained the name "Juan Galvan Menchacca."

By felony complaint filed on March 4, 2010, defendant was charged with felony second degree burglary (§ 459; count 1) and felony forgery (§ 470, subd. (d); count 2). Specifically, count 1 stated that defendant entered "a certain building . . . with [the] intent to commit theft and a felony." (Italics omitted.) The complaint also alleged that defendant had suffered one prior prison term (§ 667.5, subd. (b)).

On June 23, 2010, pursuant to a plea agreement, defendant pleaded guilty to count 1. In return, the remaining allegations were dismissed, and defendant was sentenced to a total term of eight months in state prison to run consecutive to the sentence he received in another matter.

On February 25, 2015, defendant filed a petition for resentencing and to have his felony conviction designated a misdemeanor pursuant to section 1170.18, subdivision (a).

On May 11, 2015, the People filed a response opposing defendant's eligibility for relief. The People claimed defendant was not eligible for relief because his offense was not a qualifying offense and EZ Check Cashing was not a commercial establishment. That same day, the trial court granted defendant's petition, reduced his offense to a

misdemeanor pursuant to section 459.5, and resentenced defendant to 364 days in county jail with credit for time served.

The People filed a timely appeal.

II

DISCUSSION

On November 4, 2014, voters approved Proposition 47, the Safe Neighborhood and Schools Act, which became effective November 5, 2014. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) Proposition 47 reduced certain drug- and theft-related crimes from felonies or wobblers to misdemeanors for qualified defendants and added, among other statutory provisions, sections 1170.18 and 459.5. (*People v. Contreras* (2015) 237 Cal.App.4th 868, 889-890.) Section 1170.18 creates a process permitting persons previously convicted of crimes as felonies, which might be misdemeanors under the new definitions in Proposition 47, to petition for resentencing. (See generally *People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108-1109.)

Penal Code section 459.5 was among the provisions added by Proposition 47. It reduces certain second degree burglaries to misdemeanors by defining them as "shoplifting," that is, "entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars ($950)." (§ 459.5, subd. (a).)

In this case, the trial court granted defendant's petition to reduce his felony second degree burglary conviction of entering a check cashing establishment with the intent to cash a stolen money order in the amount of $351.75. The People now appeal, raising a number of issues. Specifically, the People assert that defendant failed to establish eligibility, defendant's conduct of entering the check cashing establishment was to commit felony identity theft and not "shoplifting," and defendant did not enter a "commercial establishment" within the meaning of section 459.5.

We review a trial court's "legal conclusions de novo and its findings of fact for substantial evidence." (*People v. Trinh* (2014) 59 Cal.4th 216, 236.) The interpretation of a statute is subject to de novo review on appeal. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916.) "In interpreting a voter initiative like [Proposition 47], [the courts] apply the same principles that govern statutory construction." (*People v. Rizo* (2000) 22 Cal.4th 681, 685.) " 'The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.]' " (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276.) "In determining intent, we look first to the words themselves. [Citations.] When the language is clear and unambiguous, there is no need for construction. [Citations.] When the language is susceptible of more than one reasonable interpretation, however, we look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous

administrative construction, and the statutory scheme of which the statute is a part. [Citations.]" (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1007-1008.)

A. *Petitioner's Burden*

The People contend the trial court erred in granting the petition because defendant did not "present any evidence whatsoever regarding the underlying facts of his section 459 conviction." In effect, the People contend the trial court was not permitted to reach the merits of defendant's petition without first finding defendant had made a prima facie case of entitlement to resentencing. We find no error.

First, the People fail to set forth what constitutes a prima facie case or how defendant's petition was defective. "An appellate court is not required to examine undeveloped claims, nor to make arguments for parties." (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.) We decline to do so here.

Even assuming the People's argument is that defendant failed to show he cashed a money order for an amount that did not exceed $950, we refuse to reverse on that basis. Defendant signed a petition declaring, under penalty of perjury, that "the value of the check" he was convicted of passing "does not exceed $950." The People did not contest the assertion in their responsive pleading in the trial court. Nor did they in any way address the sufficiency of the petition. Moreover, defendant's record of conviction contains the arrest warrant showing the value of the money order. Under these circumstances, we cannot find the trial court abused its discretion by reaching the merits of defendant's petition.

B. *Identity Theft*

The People contend that defendant was not eligible for resentencing because he entered EZ Check Cashing with the intent to commit felony identity theft (§ 530.5), an offense not subject to Proposition 47.[3]

The complaint charged that on August 22, 2009, defendant "wilfully and unlawfully enter[ed] a certain building . . . with intent to commit theft and a felony" (italics omitted) in violation of section 459 (count 1). In count 2, defendant was charged with forgery of a cashier's check (§ 470, subd. (d)). Both of the crimes are interrelated in that defendant entered the check cashing establishment and cashed a stolen money order in the amount of $351.75. The complaint did not charge identity theft. Defendant entered a plea to count 1, burglary. Identity theft simply was not placed in issue at the time of the plea.

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[3] Several courts have held that "larceny" in section 459.5 includes theft by false pretenses. (See *People v. Garrett* (2016) 248 Cal.App.4th 82, 86, 89-90; *People v. Fusting* (2016) 1 Cal.App.5th 404, 411; *People v. Smith* (2016) 1 Cal.App.5th 266, 274-275, review granted Sept. 14, 2016, S236112.) Our Supreme Court is currently considering whether a defendant is entitled to resentencing on a second degree burglary conviction because the conviction meets the definition of misdemeanor shoplifting, or because section 1170.18 impliedly includes any second degree burglary involving property valued at $950 or less. (See *People v. Gonzales* (2015) 242 Cal.App.4th 35, review granted Feb. 17, 2016, S231171; see also, e.g., *People v. Vargas* (2016) 243 Cal.App.4th 1416, review granted Mar. 30, 2016, S232673; *People v. Valencia* (2016) 245 Cal.App.4th 730, review granted May 25, 2016, S233402.) It has also been held that a check cashing business qualifies as a commercial establishment for purposes of section 459.5. (*People v. Smith*, *supra*, at pp. 272-274.)

In *People v. Abarca* (2016) 2 Cal.App.5th 475, 483-484 (*Abarca*),[4] review granted Oct. 19, 2016, S237106, we relied on the convicted offenses, not offenses that could have been filed but were not, such as identity theft. We noted that Proposition 47 provided a petitioning procedure by which an offender could seek resentencing on felony convictions that qualified under Proposition 47. Defendant here was not convicted of identity theft. We will not look behind defendant's actual convictions to find an uncharged crime that would make him ineligible. (*People v. Berry* (2015) 235 Cal.App.4th 1417, 1427-1428; *People v. Maestas* (2006) 143 Cal.App.4th 247, 254.)

For the reasons stated in *Abarca, supra,* 2 Cal.App.5th 475, we reject the People's contention that defendant is ineligible for resentencing.

C. *Commercial Establishment*

The People contend that defendant is not entitled to resentencing because a check cashing establishment is not a "commercial establishment" within the meaning of section 459.5. That term is not defined in the Penal Code, and the People urge us to adopt a commonsense meaning, which would be its plain, ordinary meaning. The People contend that the voters intended to limit shoplifting to theft crimes of establishments which have goods on display.

In *Abarca, supra,* 2 Cal.App.5th at pages 481-482, we rejected the same argument, noting that the term "commerce" is normally defined as the exchange of goods and services, and the term "establishment" is defined as a place of business. We explained:

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[4] California Rules of Court, rules 8.1105 and 8.1115.

"Banks satisfy this definition. Bank customers use banks to deposit and withdraw funds in exchange for fees. In the context of approving banks' ability to collect fees from non-depositors who use their automatic teller machines, the U.S. Court of Appeals for the Ninth Circuit noted '[t]he depositing of funds and the withdrawal of cash are services provided by banks since the days of their creation. Indeed, such activities define the business of banking.' (*Bank of America v. City & County of San Francisco* (9th Cir. 2002) 309 F.3d 551, 563.) Thus, a business like U.S. Bank provides financial services in exchange for fees, and is therefore a commercial establishment within the ordinary meaning of that term." (*Abarca, supra,* 2 Cal.App.5th at pp. 481-482.) A check cashing establishment, therefore, is a financial services business. We follow our precedent in *Abarca*, and again reject the People's argument. (*Ibid*.)

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.